HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 403 of 2004

Sunil Kumar Tyagi s/o Sri Om Prakash Tyagi
Village Sadharan Pur
P.S. Jhabreda, District Haridwar ..... Applicant

Versus

1. State of Uttaranchal
2. Rahul Tyagi s/o Rampal Tyagi
   Village Sadharan Pur, P.S. Jhabreda,
   District Haridwar ..... Respondents

Dated: 11.12.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Rajendra Singh counsel for the petitioner and A.G.A. for the State.

By the present application under section 482 Cr.P.C. the applicant has prayed for quashing of the order dated 9.8.2004 passed by the Sessions Judge, Haridwar in S.T. No. 329 of 2000, State vs. Rahul Tyagi and allow the application under section 311 Cr.P.C.

Briefly stated applicant Sunil Kumar is the complainant in Sessions Trial No. 329 of 2000 under section 302 I.P.C., pending in the Court of Sessions Judge, Haridwar against accused Rahul Tyagi respondent no. 2. The applicant moved an application under section 311 Cr.P.C. with the assertion that on 29.2.2000 he had submitted an applilcation to S.O. Jhabreda but while submitting charge sheet, the Investigating officer has

not mentioned the name of Sri Dharam Veer Tyagi. The complainant has prayed for summoning the witness for his examination under section 311 Cr.P.C.

The trial Court has dismissed the application vide impugned order. Under section 311 Cr.P.C. the court has power to summon material witness, or examine the person present during the stage of any inquiry, trial or proceedings. In the present case it would be in the interest of justice, that the statement of the witness mentioned by the complainant in his application be recorded in the Court.

In view of the order dated 9.8.2004 passed by the Sessions Judge, Haridwar is set aside. The Sessions Judge is directed to summon the witness mentioned by the complainant for examination in the Court.

Accordingly, application under section 482 is allowed.

Rajesh Tandon, J.

Dated: 11.12.2006
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